



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

March 31, 2003

Fraser Stryker Law Firm
Attn. Steven Bruckner
500 Energy Plaza
409 S. 17th St.
Omaha, NE 68102



RE: Former Manufactured Gas Plant Site (MGP) and Omaha Public Power District (OPPD)
Located at 7th Street between 10th and 11th Ave., Council Bluffs, Iowa

Dear Mr. Bruckner:

Thank you for speaking with me on Tuesday, March 25, 2003 regarding this matter. As I explained the Iowa Department of Natural Resources (IDNR) is conducting some investigation into potential responsible parties associated with a MGP site in Council Bluffs, Iowa. One portion of the MGP site is currently owned by Aquila, Inc. who acquired it in 1985. An adjoining parcel is owned by a local contracting company, K.C. Peterson Construction Company who acquired it from Aquila, Inc. in 1986. I am enclosing some maps to give you some orientation to the property.

The purpose of this letter is to inform you of the regulatory status of this site and to provide an opportunity for Omaha Public Power District (OPPD) to review and respond to some factual and legal research conducted by counsel for Aquila which indicates OPPD could potentially have some responsibility for taking corrective action.

REGULATORY HISTORY

I will give you a very brief history regulatory history of the site. According to Aquila, Inc. (formerly UtiliCorp United Inc.), they purchased this property in 1985 as part of the purchase of Peoples Natural Gas Company (Peoples) assets which was then a division of HNG/InterNorth, Inc. which later changed its name to Enron Corp.¹ A "Phase I" investigation was apparently conducted in 1990 by Peoples that consisted of some soil and groundwater sampling which discovered elevated levels of PAHs and volatile hydrocarbons. In 1993, Peoples entered into an

¹ The research document from Aquila's counsel dated July 15, 2002 argues that Aquila has no successorship liability derived from People's since this property acquisition was only an asset purchase. However, Peoples signed an Administrative Consent Order in 1993 with EPA in which they state that Peoples is a division of UtiliCorp United, Inc.

Administrative Order On Consent (AOC) and agreed to conduct further site assessment in the form of a "Phase II" investigation. That Phase II report was submitted to EPA and is dated October 1995. At some point, I believe the AOC was terminated.

I believe some attention was then drawn to this site as the result of development plans by the City of Council Bluffs and the Pottawattamie County Development Corporation. They had also conducted a Phase II site assessment of properties in this area in March 2000. EPA Region 7 then made a decision to classify the site as "no further remedial action planned" (NFRAP) sometime in May 2000. Based on file material and conversations with EPA representatives and IDNR staff, part of the reason for EPA issuing the no further action status was the expectation that the IDNR would assume regulatory oversight and that the then "potentially responsible party" (PRP) had expressed an interest in undertaking some further corrective action. Apparently, the site did not score high enough for placement on the national priorities list (NPL).

The IDNR believes that further site assessment needs to be done at the site. The scope of that assessment has not yet been defined. There is also the possibility that some type of "removal" action may be required given the presence of old gasholders which are believed to contain source materials. There is also DNAPL or free product in groundwater. There may be some possibility that further remedial action might be required depending on the results of a risk assessment and the planned development activities.

OWNERSHIP AND OPERATIONAL HISTORY

The IDNR asked Aquila, Inc. to provide what ownership and operational history they could for this site and to respond to the issue of whether they could be considered to have some environmental liability as a current property owner. They were also asked their position as to potential derivative or successorship liability arising out of affiliation with former owners and operators of the MGP. Aquila, Inc; through their counsel provided quite an extensive factual history of the property ownership, operational history and corporate affiliations with prior owners and operators.

That research draws the conclusion that OPPD may have some successorship liability due to its apparent acquisition of all the outstanding stock in Nebraska Power Company in 1945. Nebraska Power Company may have been the successor to Omaha Electric Light & Power Company which was a parent company of Citizens Gas & Electric Company of Council Bluffs (Citizens). Citizens in turn was both a former property owner and operator of the MGP from approximately 1903 until about 1928 when the property was sold to Council Bluffs Gas Company which owned and operated the facility until about 1932. Reportedly, the manufactured gas facilities remained operational in some limited fashion until about 1952. (See "Gas Plant History" from Phase II report which I have enclosed)

I am enclosing a copy of a document dated July 15, 2002 prepared by counsel for Aquila, Inc. and a follow-up research document dated February 25, 2003. The research references numerous source materials which I have available and can provide to you if necessary.

The IDNR is requesting that OPPD respond to the factual statements referenced in these documents as they apply to OPPD and provide your position on any potential liability OPPD might have under State and Federal law. I would greatly appreciate it if you could provide your response within 30 days. Any other comments, facts or legal analysis regarding other potentially responsible parties would be appreciated.

Sincerely,



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